



DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-6136-N-01]

Waivers, Alternative Requirements and Extensions for Community Development Block Grant Disaster Recovery Grantees

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This notice governs Community Development Block Grant disaster recovery (CDBG-DR) funds awarded under several appropriations. Specifically, this notice provides waivers and establishes alternative requirements for certain grantees that have submitted waiver requests for grants provided pursuant to Public Laws 112-55, 113-2, 114-113, 114-223, 114-254, 115-31, 115-56 and 115-123. This notice also provides further clarification on the application of the green building standards established by the Department for 2017 CDBG-DR grantees in the February 9, 2018 **Federal Register** notice (83 FR 5844). Additionally, this notice addresses the availability of an alternative requirement to Section 414 of the Stafford Act and other URA provisions for grantees that received an allocation of CDBG-DR funds under Public Laws 114-113, 114-223, 114-254, and 115-31.

DATES: Applicability Date: **[INSERT DATE FIVE DAYS AFTER DATE OF**

PUBLICATION IN THE FEDERAL REGISTER.]

FOR FURTHER INFORMATION CONTACT: Claudette Fernandez, Director, Office of Block Grant Assistance, Department of Housing and Urban Development, 451 7th Street, SW, Room 7286, Washington, DC 20410, telephone number 202-708-3587. Persons with hearing or speech disability may access this number via TTY/VRS by calling the Federal Relay Service at 800-877-8339. Facsimile inquiries may be sent to Ms. Fernandez at 202-708-0033. (Except for

the "800" number, these telephone numbers are not toll-free.) Email inquiries may be sent to disaster_recovery@hud.gov.

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I. Public Law 112-55 Waivers and Alternative Requirements:

New LMI National Objective Criteria for Buyouts and Housing Incentives (New York State only)

New York State was awarded \$71,654,166 of CDBG-DR funds under Public Law 112-55 for recovery from Hurricane Irene and Tropical Storm Lee (77 FR 22583) and \$4,416,882,000 of CDBG-DR funds under Public Law 113-2 for recovery from Hurricane Sandy. This section of the notice specifies waivers and alternative requirements and modifies requirements for CDBG-DR funds awarded to New York State under Public Law 112-55 to allow the State to better coordinate recovery efforts across multiple CDBG-DR allocations.

Public Law 112-55 authorizes the Secretary to waive or specify alternative requirements for any provision of any statute or regulation that the Secretary administers in connection with HUD's obligation or use by the recipient of these funds (except for requirements related to fair housing, nondiscrimination, labor standards, and the environment). Regulatory waiver authority is also provided by 24 CFR 5.110, 91.600, and 570.5. As required by Public Law 112-55, waivers and alternative requirements provided in this paragraph are in response to a request by New York State explaining why the waiver is required to facilitate the use of the funds and based upon a determination by the Secretary that good cause exists and that the waiver or alternative requirement is not inconsistent with the overall purposes of title I of the Housing and Community Development Act of 1974, as amended (HCDA).

The Department's April 16, 2012 notice authorized New York State to carry out "buyouts," which for purposes of grants under Public Law 112-55, are a type of acquisition activity limited to acquisition of properties located in a floodway or floodplain that is intended to reduce risk from future flooding. The April 16, 2012 notice prohibits redevelopment of property acquired through buyouts and imposes other requirements on the use of CDBG-DR funds for this activity. This same notice also waives 42 U.S.C. 5305(a) and associated regulations to allow New York State to offer housing incentives. Housing incentives are usually offered to encourage households to relocate to a suitable housing development or to an area promoted by the community's comprehensive recovery plan and may be provided in addition to acquisition or buyout awards.

The **Federal Register** notices governing New York State's grants for disasters occurring in 2012 also included waivers and alternative requirements authorizing similar buyout and

housing incentive activities.

The Department's December 27, 2017 notice (82 FR 61320) provided an alternative requirement that established criteria under which buyout activities and housing incentives related to recovery from New York State's 2012 disasters (and other specified disasters) can meet a low- and moderate-income (LMI) national objective (82 FR 61322). HUD defined these alternative national objective criteria as Low/Mod Buyout (LMB) and Low/Mod Housing Incentive (LMHI). In that **Federal Register** notice, HUD did not make the LMB and LMHI criteria applicable to New York State's grant under the Consolidated and Further Continuing Appropriations Act, 2012 (Public Law 112-55), because Public Law 112-55 only permits HUD to grant waivers and alternative requirements upon a request by a grantee receiving funds under that appropriation.

The State has now requested that HUD establish the alternative requirement for meeting an LMI national objective for buyout activities and housing incentives carried out with CDBG-DR funds under Public Law 112-55. New York State is currently using the new national objective criteria for the buyout program funded with CDBG-DR funds awarded under Public Law 113-2. The State contends that granting this waiver and alternative requirement for its grant under Public Law 112-55 "will ensure a consistency of approach between the grants and allow... [the State] to account for the benefits provided to LMI households through these important, long term recovery activities." The LMB and LMHI national objective criteria will provide a valuable method to demonstrate how these program activities assist LMI households.

Based on the above, in addition to the existing national objective criteria at 24 CFR 570.483(b)(1)–(4), HUD is establishing this alternative requirement to add additional national

objective criteria for activities benefiting low and moderate income persons to allow New York State to use the LMB and LMHI national objective criteria described in section II of the Department's December 27, 2017 notice to demonstrate a national objective for buyout activities and housing incentives it carries out under its Public Law 112-55 CDBG-DR award.

II. Public Law 113-2 Extensions, Waivers and Alternative Requirements

This section of the notice applies to certain grantees that received an allocation of funds appropriated under Public Law 113-2, which ultimately made available \$15.2 billion in CDBG-DR funds for necessary expenses related to disaster relief, long-term recovery, restoration of infrastructure and housing, and economic revitalization due to Hurricane Sandy and other eligible events in calendar years 2011, 2012, and 2013.

Public Law 113-2 authorizes the Secretary to waive or specify alternative requirements for any provision of any statute or regulation that the Secretary administers in connection with HUD's obligation or use by the recipient of these funds (except for requirements related to fair housing, nondiscrimination, labor standards, and the environment). Waivers and alternative requirements are based upon a determination by the Secretary that good cause exists and that the waiver or alternative requirement is not inconsistent with the overall purposes of title I of the HCDA. Regulatory waiver authority is also provided by 24 CFR 5.110, 91.600, and 570.5.

For the waivers and alternative requirements described in this section of notice, the Secretary has determined that good cause exists and that the waivers and alternative requirements are not inconsistent with the overall purposes of title I of the HCDA. Grantees under Public Law 113-2 may request waivers and alternative requirements from the Department as needed to address specific needs related to their recovery activities. Public Law 113-2 also

authorizes the Department to provide waivers and establish alternative requirements absent a request from a CDBG-DR grantee.

1. *Additional eligible activities for the extension of expenditure deadlines.* The Disaster Relief Appropriations Act, 2013 (Public Law 113-2) requires grantees to expend CDBG-DR funds within 24 months of the date on which the Department obligates funds to a grantee and authorizes the Office of Management and Budget (OMB) to grant a waiver of the 24-month expenditure deadline. OMB authorized the Department to provide CDBG-DR grantees with expenditure deadline extensions for activities that are inherently long-term and where it would be impracticable to expend funds within the 24-month period and still achieve program missions, up to an amount approved by OMB.

In the May 11, 2015 notice (80 FR 26942), the Department established the process and criteria for the submission of expenditure deadline extension requests for CDBG-DR grantees in receipt of funds under Public Law 113-2. Section III of the May 11, 2015 notice established four categories of disaster recovery activities that would be eligible for an extension of the 24-month expenditure deadline: public facilities and improvements; housing; economic revitalization; and grant administration. Since the publication of the May 11, 2015 notice, the Department has reviewed and acted on expenditure deadline extension requests from several CDBG-DR grantees. As recovery activities approach completion and with a requirement that all CDBG-DR funds provided under Public Law 113-2 be expended no later than September 30, 2022, the Department has determined that additional categories of disaster recovery activities that are not identified in the May 11, 2015 notice are also inherently long-term in nature, and present implementation challenges that make it impracticable for grantees to achieve disaster recovery

program missions within the 24-month expenditure deadline. The Department, for instance, recognizes that many Public Law 113-2 grantees are engaged in long term planning activities to enhance the resiliency of their jurisdiction to future disasters. Similarly, the Department has determined that certain public service activities, most notably various job training initiatives, continue to play an important role in grantee post-disaster economic recovery efforts. These types of activities therefore warrant inclusion in the activities that may qualify for an extension of the 24-month expenditure deadlines. The Department, however, shall only extend planning and public service activities that are authorized in a grantee's action plan as of the applicability date of this notice. Accordingly, the Department is replacing section III of the May 11, 2015 notice with the following:

“III. Eligible Activities

The National Disaster Recovery Framework acknowledges that long-term recovery is inherently a multi-year process. The Department recognizes that grantees allocate a significant portion of CDBG-DR funds to complex and large-scale programs and projects that are long-term in nature and that planning and public services are often critical components of long-term recovery. The Department also recognizes that grantees will require CDBG-DR administrative funds to conduct grant closeout and engage in ongoing program oversight, and that these efforts will inevitably extend beyond the twenty-four-month expenditure deadline that applies to each obligation.

Within the amounts waived by OMB as not being subject to the expenditure deadline, the Department will limit its consideration of expenditure deadline extension requests to certain types of eligible disaster recovery activities undertaken by grantees which are determined to be

long-term in nature. The Department will consider grantee programs and projects within the following six categories for expenditure deadline extensions:

- *Public facilities and improvements.* Typical public facilities and improvement activities include the rehabilitation, replacement, or relocation of damaged public facilities and improvements, as well as investments to increase the resiliency of those facilities and improvements.
- *Housing.* Typical housing activities include new construction, elevation, and rehabilitation of single family or multifamily residential units.
- *Economic revitalization.* Economic revitalization activities often include the provision of loans and grants to small businesses, job training programs, the construction of education facilities to teach technical skills, making improvements to commercial or retail districts, and financing other efforts that attract and retain workers in disaster-impacted communities.
- *Grant administration.* Typical administrative activities include salaries, wages, and related costs of grantee or subrecipient staff and others engaged in program management, monitoring, and evaluation. Administrative costs are limited by the Appropriations Act to five percent of each grantee's total allocation.
- *Public Services.* Public service activities typically include employment services (e.g., job training), fair housing counseling, and education programs.
- *Planning.* Planning activities often include community development plans, functional plans (e.g., for resiliency) and capacity building activities.”

2. Change in the Substantial Amendment Criteria.

The Department's March 5, 2013 notice (78 FR 14329) established the criteria for substantial amendments to action plans for disaster recovery and included the requirement that an allocation or re-allocation of more than \$1 million would constitute a substantial amendment. Grantees awarded funds under Public Law 113-2 are nearing the end of their recovery programs and are moving towards the eventual closeout of their CDBG-DR awards. Whereas grantees in the earliest stages of recovery rely more often on estimated activity budgets, grantees approaching closeout rely more on actual budgets and more routinely reallocate funds between activities and projects as their budgets transition from estimates of program costs to actual costs. Accordingly, to provide grantees with increased flexibility in the reallocation of CDBG-DR funds and consistent with the Department's definition of a substantial amendment for 2015, 2016 and 2017 CDBG-DR grantees, the Department is deleting the third paragraph of section VI.A.3.a. of the March 5, 2013 notice and establishing the following new definition of a substantial amendment for all grantees allocated funds under Public Law 113-2:

“Subsequent to publication of the action plan, the grantee must provide a reasonable time frame and method(s) (including electronic submission) for receiving comments on the plan or substantial amendment. In its action plan, each grantee must specify criteria for determining what changes in the grantee's plan constitute a substantial amendment to the plan. At a minimum, the following modifications will constitute a substantial amendment: A change in program benefit or eligibility criteria; the addition or deletion of an activity; the allocation or reallocation of a monetary threshold amount as specified by the grantee in its action plan; or a change in the monetary threshold amount above which allocations or reallocations trigger a substantial amendment. The grantee may

substantially amend the action plan if it follows the same procedures required in this Notice for the preparation and submission of an action plan for Disaster Recovery. Prior to submission of a substantial amendment, the grantee is encouraged to work with its HUD representative to ensure the proposed change is consistent with this Notice, and other requirements made applicable by the Federal award.”

If a grantee chooses to change the threshold amount established by HUD in the March 5, 2013 notice (\$1 million), a grantee shall undertake a substantial amendment to make changes to its monetary threshold above which allocations and reallocations constitute a substantial amendment. Once that substantial amendment is approved by HUD, the grantee shall apply the new definition of a substantial amendment.

3. Buildings for the general conduct of government (City of Minot, North Dakota only).

The Department’s June 7, 2016 notice (81 FR 36557) established the requirements for grantees receiving CDBG-DR funds through the National Disaster Resilience Competition (CDBG-NDR), under Public Law 113-2. The city of Minot was awarded a CDBG-NDR grant of \$74,340,770 and its approved Phase 2 application included an allocation of \$3,750,000 for the relocation of its City Hall.

The city’s existing City Hall and its emergency communications center are in the city’s flood inundation area and within the most recent FEMA-identified flood plain. The city plans to use CDBG-NDR grant funds to acquire a building for the City Hall, emergency communications center, and for the Center for Technical Education that will also be established pursuant to the city’s approved Phase 2 CDBG-NDR application. The importance of the City Hall relocation

with the emergency police dispatch center is further reflected in the city's commitment of \$1 million of its own funds to this aspect of the CDBG-NDR award.

To implement this portion of the city's CDBG-NDR award, the city has requested a waiver of 42 U.S.C. 5305(a)(2), which excludes acquisition, construction, reconstruction, or installation of buildings for the general conduct of government from eligible public facilities activities. The Department has determined that the city's waiver request is consistent with the underlying premise and purpose of the city's CDBG-NDR grant and is approving the requested waiver to authorize the expenditure of CDBG-NDR grant funds for the acquisition, rehabilitation and reuse of a commercial office structure for use as its primary governmental offices, consistent with the city's approved Phase 2 CDBG-NDR application. Therefore, HUD is waiving the prohibition on buildings for the general conduct of government in 42 U.S.C. 5305(a)(2) and associated regulations at 24 CFR 570.207(a) to permit the City of Minot to carry out the public facility activity referred to as City Hall and comprised of activities as outlined in the city's CDBG-NDR application and approved CDBG-NDR action plan.

4. Clarification that certain actions constitute part of new construction and disposition activities associated with relocation of the Isle de Jean Charles community (State of Louisiana only). The Department awarded the State of Louisiana \$92,629,249 in CDBG-NDR funds, of which \$48,373,249 was to enable the community on the Isle de Jean Charles (IDJC) to relocate to a new and more resilient community. As part of this award, the State grantee will construct new housing on land it acquires for relocation purposes. This housing will be transferred to former residents of the Isle de Jean Charles community that relocate to the new community.

In its approved application for CDBG-NDR funds, the State noted that IDJC has

experienced a 98 percent loss of land since 1955, with only 320 acres remaining of what was a 22,400-acre island in 1955. The State's Phase 1 application notes that the island's residents will relocate to a new community, but as long as the island itself exists, the residents will retain their property on the island for ceremonial, cultural, historic and recreational uses. The Phase 1 application also notes that the connecting road to the island will very soon be impassible and that access will then be available only by boat.

To implement the IDJC portion of its grant, the State of Louisiana has explored a variety of voluntary relocation assistance options to facilitate the movement of island residents to the planned new community. Both the State and IDJC community have indicated that to effectively relocate as many island residents as possible, it is critical to provide those residents with continued access to their property for ceremonial, cultural, historic and recreational uses for the finite remaining life of the island.

While it is important to permit the community's continued access to the island for these limited purposes, it is also important to take reasonable measures to ensure that the land is no longer used for primary residences or otherwise developed in ways that frustrate the purposes of the grant to relocate the community to a safer area. The current residents of the island will continue to own their property on the island. However, as a condition of receiving newly constructed housing, the State plans to restrict owners' use of their former land on the island as a primary residence. The State indicates that it may need to record mortgage liens or limited real property interests such as easements or deed restrictions on the property of relocated island residents to restrict the use of the island land as a primary residence.

For this reason, HUD is clarifying that costs incurred by the State to establish and record

mortgage liens or limited real property interests on the island to restrict the use of the land as a primary residence are eligible costs that may be charged to the grant as part of the State's new construction and disposition activities to relocate island residents. HUD considers the costs incurred to restrict continued use of the island property as a primary residence to meet the same national objective as the new construction and disposition activities. HUD is also clarifying that since the actions to limit use as a primary residence are undertaken as a condition of new construction and disposition activities to provide relocated residents with more resilient housing, the actions are not undertaken as part of acquisition activities that trigger buyout requirements.

The State should impose conditions on assistance to relocate island residents that are consistent with the purpose of the CDBG-NDR award. Specifically, the State should prohibit new construction, reconstruction, and major rehabilitation on the property and prohibit use of the property as a primary residence. CDBG-NDR funds may not be used for rehabilitation of structures on the island. However, if the State chooses to permit limited, minor rehabilitation of structures on the property with other, non-grant funds to allow for the continued interim use of the property for ceremonial, cultural, historic and recreational uses, the State should specify in its policies and procedures the allowable activities that would constitute a minor rehabilitation. Under the second homes prohibition established for all CDBG-NDR grantees in the June 7, 2016 notice (81 FR 36578), the State may not provide CDBG-NDR funds for rehabilitation of residential structures on the island.

5. Rental Assistance Waiver extension (State of New Jersey only). In the Department's August 15, 2016 notice (81 FR 54114), the State of New Jersey was granted a waiver for the use of CDBG-DR funds for rental assistance for New Jersey homeowners in the Rehabilitation,

Reconstruction, Elevation and Mitigation (RREM) Program and the Low and Moderate-Income (LMI) Homeowners Rebuilding Program (LMI Program). In the State of New Jersey, more than 7,600 homeowners have participated in the State's RREM Program or the LMI Program to rebuild their Sandy-damaged homes. Nearly 6,400 of those homeowners have completed construction; however, the approximately 1,200 remaining participants, many of whom are LMI households, are still in the construction phase due to insufficient funding to complete the project, contractor disputes or delays associated with the re-opening of certain claims under the National Flood Insurance Program. While undergoing rehabilitation of their homes, most of these applicants are required to continue to make payments for the mortgage on the home in addition to paying rent for alternative housing during the rehabilitation. The August 15, 2016 notice waived the requirements at section 105(a)(8) of the HCDA to the extent necessary to allow the State of New Jersey to use up to \$30 million of its CDBG-DR allocation to provide up to 21 months of rental assistance through its Rental Assistance Program (RAP) to eligible RREM and LMI program applicants. The State estimates that approximately 200 of the 400 current RAP recipients in both rehabilitation programs will exhaust their maximum 21 months of RAP assistance in January 2019. The State is taking several actions to close out RAP and address the remaining rehabilitations of these homes. To address the continuing need of RREM and LMI program participants, the State of New Jersey will submit a substantial amendment to allocate an additional \$50 million to its housing rehabilitation programs to assist participants in the completion of their homes. The State also indicates that it has increased its project management support to the remaining homeowner-managed construction projects to accelerate completions. To date, the State has only disbursed \$11.6 million of the \$30 million allowed under the previous

waiver for RAP assistance and has not requested an increase to this cap. Without the waiver provided herein, the State could not continue to use CDBG-DR funds for these payments to individuals or families.

Accordingly, to allow the State of New Jersey to continue RAP and to assist homeowners in completing the rehabilitation of their homes, HUD is extending its original waiver granted in the August 15, 2016 notice to allow the State to use up to \$30 million of its CDBG-DR allocation to provide RAP assistance to eligible RREM and LMI program applicants for an additional 19 months, for a total of 40 months. The State must implement this alternative requirement consistent with the approach outlined in its requests and as described herein. This waiver and alternative requirement shall remain in effect until June 30, 2022, after which the State will no longer be able to use CDBG-DR funds for any RAP assistance.

6. *Waiver and alternative requirement to permit certain activities as part of the Iowa Watershed Approach (State of Iowa only).* The Department awarded the State of Iowa \$96,887,177 in CDBG-NDR funds to support the Iowa Watershed Approach, a holistic watershed-scale program designed to sustain the State's agricultural economy while protecting vulnerable residents and communities. HUD funding will enable several watersheds to form Watershed Management Authorities, which will develop hydrological assessment and watershed plans, and implement pilot projects in the upper and lower watersheds, as well as invest in more resilient, healthy homes in Dubuque.

As part of the Iowa Watershed Approach, the State's NDR application proposed to fund subrecipients to install improvements and implement stormwater management practices on mostly privately-owned agricultural land to collect and hold back water in times of increased rain

to prevent or minimize the impact of downstream flooding. To the extent some of these activities take place on privately-owned land, all of the activities may not be eligible under section 105(a)(2) of the HCDA, which permits the acquisition, construction, reconstruction, or installation of public works, facilities, and site or other improvements. However, HUD recognizes that the improvements and planned management practices to be installed or applied on private lands provide public benefits that are similar to the public benefits derived from public works, facilities, and other improvements generally eligible under section 105(a)(2).

Accordingly, the Department is approving a waiver and alternative requirement to expand section 105(a)(2) of the HCDA to the extent necessary to permit Iowa to carry out the activities described in its NDR application by installing improvements and implementing stormwater management practices for the purpose of preventing downstream flooding. This eligible activity includes the expenditure of CDBG-NDR funds for actions necessary to obtain mandatory environmental permits (if approved by the permitting agency). The State must demonstrate at a program level that such payments are necessary and reasonable and are required in order to secure the permits needed to implement its CDBG-NDR project.

III. Public Law 114-113 and 115-31 Waivers and Alternative Requirements

This section of the notice applies to grantees that received an allocation for a major disaster in 2015 and 2016 under Public Law 114-113 and Public Law 115-31. Public Laws 114-113 and 115-31 authorize the Secretary to waive or specify alternative requirements for any provision of any statute or regulation that the Secretary administers in connection with the obligation by the Secretary, or use by the recipient, of these funds, except for requirements related to fair housing, nondiscrimination, labor standards, and the environment. Regulatory

waiver authority is also provided by 24 CFR 5.110, 91.600, and 570.5. As required by Public Laws 114-113 and 115-31, waivers and alternative requirements provided in this section are based upon a determination by the Secretary that good cause exists and that the waiver or alternative requirement is not inconsistent with the overall purposes of title I of the HCDA.

1. Most Impacted and Distressed Area Requirements (South Carolina and Texas only).

This paragraph amends the Department's August 7, 2017 notice, which allocated additional CDBG-DR funds for qualified disasters that occurred in 2015. Table 2 of the August 7, 2017 notice indicates the HUD-identified "most impacted and distressed" (MID) areas impacted by the qualified disasters and the amounts that each grantee is required to expend in the MID areas. The notice required that at least 80 percent of the total combined funds provided within each State address unmet needs within the HUD-identified MID areas. The methodology, however, that HUD used to calculate the required amount to be expended in the MID areas for South Carolina and Texas was not correct. For the State of South Carolina, the amount established for its MID area expenditures did not account for CDBG-DR funds that would also be expended by Lexington County, Columbia, and Richland County as CDBG-DR grantees. For the State of Texas, the MID area expenditure calculation should have been based on a consideration of damage data received by HUD from December 2016, or fuller data received in May 2017. The MID calculation in the August 7, 2017 notice for Texas, however, only reflects the consideration of the December 2016 data. Therefore, this notice replaces Table 2 of the August 7, 2017 notice to reflect the corrected MID area expenditure amounts for the States of South Carolina and Texas:

Table 2 – Qualifying 2015 and 2016 Disasters and “Most Impacted and Distressed” areas

FEMA Disaster No.	Grantee	Minimum amount that must be expended for recovery in the HUD-identified “most impacted and distressed” areas
2015 Disasters		
4241	Lexington County (Urban County), SC	(\$5,038,000) Lexington County Urban County Jurisdiction
4241	Columbia, SC	(\$6,166,000) Columbia
4241	Richland County, SC	(\$7,254,000) Richland County Urban County Jurisdiction
4241	State of South Carolina	(\$20,205,200) Charleston, Dorchester, Florence, Georgetown and Clarendon Counties
4223, 4245	Houston, TX	(\$20,532,000) City of Houston
4223, 4245	San Marcos, TX	(\$8,714,000) City of San Marcos
4223, 4245, 4272	State of Texas	(\$13,248,400) Harris, Hays, Hidalgo, and Travis Counties
2016 Disasters		
4263, 4277	State of Louisiana	(\$41,148,000) East Baton Rouge, Livingston, Ascension, Tangipahoa, Ouachita, Lafayette, Vermilion, Acadia, Washington, and St. Tammany Parishes
4273	State of West Virginia	(\$36,476,000) Kanawha, Greenbrier, Clay, and Nicholas Counties
4266, 4269, 4272	State of Texas	(\$13,304,800) Harris, Newton, Montgomery, Fort Bend, and Brazoria Counties
4285	State of North Carolina	(\$30,380,800) Robeson, Cumberland, Edgecombe, and Wayne Counties
4286	State of South Carolina	(\$23,824,800) Marion and Horry Counties
4280, 4283	State of Florida	(\$47,468,000) St. Johns County

2. Waiver and alternative requirement for 70 percent overall low- and moderate-income benefit requirement (Lexington County, South Carolina only). This paragraph specifies a waiver and alternative requirement for CDBG-DR funds awarded to Lexington County under Public Laws 114-113 and 115-31 in order to allow the County to meet the unmet needs of residents in

the HUD-defined MID areas. Lexington County was allocated \$16,332,000 of CDBG-DR funds under Public Law 114-113 and was awarded an additional \$5,038,000 under Public Law 115-31, both for recovery from 2015 severe storms and flooding (81 FR 39687 and 82 FR 36812).

The overall benefit requirement established by the HCDA requires that 70 percent of the aggregate of a grantee's CDBG-DR fund expenditures shall be used to support activities benefitting low- and moderate-income persons. Under certain circumstances, it can be difficult for grantees working in disaster recovery to meet this overall benefit test, because disasters do not always affect low- and moderate-income (LMI) areas and this requirement can therefore (in some cases) limit a grantee's ability to assist the MID areas resulting from the disaster. The Department's June 17, 2016 notice maintained the 70 percent overall benefit requirement for all CDBG-DR grantees receiving funds under Public Law 114-113 but provided grantees with the option of submitting a request to HUD for a lower overall benefit requirement. Specifically, the notice allows a grantee to request to further reduce its overall benefit requirement if it submitted a justification that, at a minimum: (a) identifies the planned activities that meet the needs of its low- and moderate-income population; (b) describes proposed activity(ies) and/or program(s) that will be affected by the alternative requirement, including their proposed location(s) and role(s) in the grantee's long-term disaster recovery plan; (c) describes how the activities/programs identified in (b) prevent the grantee from meeting the 70 percent requirement; and (d) demonstrates that LMI persons' disaster-related needs have been sufficiently met and that the needs of non-LMI persons or areas are disproportionately greater, and that the jurisdiction lacks other resources to serve them.

Lexington County submitted a request to establish a lower overall benefit requirement

based on the above criteria. In its request, the County contends that its three established programs: Minor Residential Rehabilitation, Residential Buyout and Public Infrastructure Improvement, will meet all the unmet housing needs of its LMI population in the county. Specifically, in its Residential Buyout program the County has worked to prioritize the needs of LMI persons in its four identified Disaster Reduction Risk Areas who are most at-risk to repetitive flooding damage. The majority of the applications the County received for its Minor Residential Rehabilitation program were in the eligible buyout areas and were encouraged to move to the Residential Buyout program. After three years of public outreach, the County ultimately had 135 applications that were either eligible for its Minor Residential Rehabilitation program or its Residential Buyout program, and the County will be able to assist them all. Of the 135 eligible applications, 52 of those households are LMI. According to data provided by the County, once the Minor Residential Rehabilitation and Residential Buyout programs are completed it will have addressed all LMI unmet needs in those two programs.

The County's Public Infrastructure program is still in the design phase, but the County's unmet needs analysis has shown that the projects left to be funded involve damaged bridges and improvements needed for storm water management systems. The County's analysis shows that while LMI persons will likely benefit from all of its public infrastructure projects, none of the bridges that need repair are in areas that will qualify as LMI areas under the applicable national objective criteria. However, the improvements to the storm water management systems will benefit an LMI area, will be leveraged with additional federal and private funds, and will incorporate buyout properties into the program. The County plans to allocate around \$300,000 to repair the damaged bridges and over \$1 million to improve storm water management systems.

To enable the County to undertake the activities it has determined to be most critical for its recovery, and to ensure that LMI persons are sufficiently served or assisted, HUD is granting a waiver and alternative requirement to reduce the overall benefit requirement from 70 percent to not less than 50 percent of the County's total allocation of CDBG-DR funds. This is a limited waiver modifying sections 101(c) and 104(b)(3)(A) of the HCDA and 24 CFR 570.200(a)(3) only to the extent necessary to reduce the LMI overall benefit requirement that the County of Lexington must meet when carrying out activities identified in its approved action plan from 70 percent to not less than 50 percent of the grantee's allocations of CDBG-DR funds under Public Laws 114-113 and 115-31. Based on the analysis submitted by the County, the Secretary finds a compelling need for this reduction due to the circumstances outlined in the County's request. In particular, HUD notes that the County has accepted applications in its buyout and housing program for three years following the disaster event, with significant amounts of public outreach during that time to ensure that it reached all affected communities including: updates on its disaster recovery website, neighborhood meetings and public presentations at County council meetings.

IV. Public Law 114-113, 114-223, 114-254 and 115-31 Waivers and Alternative Requirements

This section of the notice applies to grantees that received an award for a major disaster in 2015, 2016, or 2017 under Public Law 114-113, Public Law 114-223, Public Law 114-254 or Public Law 115-31, and an award for a 2017 major disaster under Public Laws 115-56 or 115-123.

1. Planning and Administration Expenditures. Grantees that received an allocation for a major disaster in 2015, 2016, or 2017 under Public Law 114-113, Public Law 114-223, Public Law 114-254 or Public Law 115-31, and an award for a 2017 major disaster under Public Laws 115-56 or 115-123, are subject to different requirements with respect to determining how planning and administrative funds will be accounted for in the requirement that 80 percent of the total grant award be expended in the HUD-identified “most impacted and distressed” areas. To avoid the administrative burden of tracking MID area expenditures differently between different grants, HUD is authorizing grantees under Public Laws 114-113, 114-223, 114-254 and 115-31 to follow the provisions of the Department’s February 9, 2018 notice. Specifically, for these grantees and for allocations pursuant to the above Public Laws, HUD will include 80 percent of a grantee’s expenditures for grant administration in its determination that 80 percent of the total award has been expended in the MID areas. HUD will include expenditures for planning activities towards a grantee’s 80 percent expenditure requirement **only** if the grantee amends its action plan to include a description of how those planning activities benefit the HUD-identified MID areas.

2. Waiver of Section 414 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.). Section 414 of the Stafford Act (42 U.S.C. 5181) provides that “Notwithstanding any other provision of law, no person otherwise eligible for any kind of replacement housing payment under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Pub. L. 91–646) [42 U.S.C. 4601 et seq.] [“URA”] shall be denied such eligibility as a result of his being unable, because of a major disaster as determined by the President, to meet the occupancy requirements set by [the URA].”

Accordingly, homeowner occupants and tenants displaced from their homes as a result of the identified disaster and who would have otherwise been displaced, as a direct result of any acquisition, rehabilitation, or demolition of real property for a federally funded program or project, may become eligible for a replacement housing payment, notwithstanding their inability to meet occupancy requirements prescribed in the URA.

Grantees that received an allocation for a major disaster in 2015, 2016, or 2017 under Public Laws 114-113, 114-223, 114-254 or 115-31, and an award for a 2017 major disaster under Public Laws 115-56 or 115-123, are subject to different requirements with respect to protections afforded to tenants and homeowners under Section 414 of the Stafford Act. The Department issued a waiver of Section 414 for all grantees receiving an allocation for a 2017 major disaster under Public Laws 115-56 and 115-123 and provided an alternative requirement in the Department's February 9, 2018 notice (83 FR 5844), as amended and replaced by language in the August 14, 2018 notice (83 FR 40314) that did not apply to grantees receiving an allocation for a major disaster in 2015, 2016, or 2017 under Public Laws 114-113, 114-223, 114-254 or 115-31.

To avoid the administrative burden of implementing two different sets of URA requirements, HUD is authorizing grantees under Public Laws 114-113, 114-223, 114-254 and 115-31 that also received an award under Public Law 115-56 or 115-123 to either: (a) continue to follow Section 414 of the Stafford Act (or any grantee-specific alternative requirement previously authorized by HUD); or (b) follow the alternative requirement of this section as previously established for Public Law 115-56 and 115-123, if the relevant activity has not yet received a Request for Release of Funds (RROF) as of the applicability date of this Notice. If a

grantee chooses to follow option (b) above then it must identify this approach in its policies and procedures related to that particular activity, and consistently apply that option for all displaced persons affected by that activity.

This waiver and alternative requirement is as follows: Section 414 of the Stafford Act (including its implementing regulation at 49 CFR 24.403(d)(1)), is waived to the extent that it would apply to real property acquisition, rehabilitation or demolition of real property for a CDBG-DR funded project, undertaken by the grantee or subrecipient, commencing more than one year after the Presidentially declared disaster, provided that the project was not planned, approved, or otherwise underway prior to the disaster. For purposes of this paragraph, a CDBG-DR funded project shall be determined to have commenced on the earliest of: (1) The date of an approved RROF and certification, or (2) the date of completion of the site-specific review when a program utilizes tiered environmental reviews, or (3) the date of sign-off by the approving official when a project converts to exempt under 24 CFR 58.34(a)(12). The Secretary has the authority to waive provisions of the Stafford Act and its implementing regulations that the Secretary administers in connection with the obligation of CDBG-DR funds covered under this waiver and alternative requirement, or the grantees' use of these funds. The Department has determined that good cause exists for a waiver and that such waiver is not inconsistent with the overall purposes of title I of the HCDA. The waiver will simplify the administration of the disaster recovery process and reduce the administrative burden associated with the implementation of Stafford Act Section 414 requirements for projects commencing more than one year after the date of the Presidentially declared disaster, considering the majority of such persons displaced by the disaster will have returned to their dwellings or found another place of

permanent residence. This waiver does not apply with respect to persons that meet the occupancy requirements to receive a replacement housing payment under the URA nor does it apply to persons displaced or relocated temporarily by other HUD-funded programs or projects. Such persons' eligibility for relocation assistance and payments under the URA is not impacted by this waiver.

3. One-for-One Replacement Housing, Relocation, and Real Property Acquisition Requirements.

Similar to the Section 414 waiver above, grantees that have received an allocation of CDBG-DR funds for 2017 disasters under Public Law 115-56 and 115-123 are currently subject to different requirements with respect to One-for-One Replacement Housing, Relocation, and Real Property Acquisition Requirements, than grantees that received an allocation of CDBG-DR funds for 2015, 2016 and 2017 disasters pursuant to Public Laws 114-113, 114-223, 114-254, and 115-31. To avoid the administrative burden of implementing two different sets of URA requirements, HUD is authorizing grantees under Public Laws 114-113, 114-223, 114-254, or 115-31 that also received an award under Public Law 115-56 or 115-123, to either continue to follow the section on One-for-One Replacement Housing, Relocation, and Real Property Acquisition Requirements as provided in Section VI.A.19. of the June 17, 2016 notice (81 FR 39700) and Section VI.A.19. of the November 21, 2016 notice (81 FR 83266); or (b) follow the requirements of the same section in Section VI.A.23.a. through e. (excluding Section VI.A.23.f.) of the February 9, 2018 notice (83 FR 5858), if the relevant activity has not yet received a Request for Release of Funds (RROF) as of the applicability date of this Notice. If a grantee chooses to follow option (b) above then it must identify this approach in its policies and

procedures related to that particular activity, and consistently apply that option for all displaced persons affected by that activity.

The provisions in Section VI.A.23.a. through e. of the February 9, 2018 notice governing One-for-One Replacement Housing, Relocation, and Real Property Acquisition Requirements are not amended but are restated below for reference:

“23. One-for-One Replacement Housing, Relocation, and Real Property Acquisition Requirements. Activities and projects undertaken with CDBG–DR funds are subject to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, (42 U.S.C. 4601 et seq.) (“URA”) and section 104(d) of the HCD Act (42 U.S.C. 5304(d)) (section 104(d)). The implementing regulations for the URA are at 49 CFR part 24. The regulations for section 104(d) are at 24 CFR part 42, subpart C. For the purpose of promoting the availability of decent, safe, and sanitary housing, HUD is waiving the following URA and section 104(d) requirements with respect to the use of CDBG–DR funds allocated under this notice:

a. Section 104(d) one for one replacement. One-for-one replacement requirements at section 104(d)(2)(A)(i) and (ii) and (d)(3) of the HCD Act and 24 CFR 42.375 are waived in connection with funds allocated under this notice for lower-income dwelling units that are damaged by the disaster and not suitable for rehabilitation. The section 104(d) one-for-one replacement requirements generally apply to demolished or converted occupied and vacant occupiable lower-income dwelling units. This waiver exempts disaster-damaged units that meet the grantee’s definition of “not suitable for rehabilitation” from the one-for-one replacement requirements. Before carrying out

activities that may be subject to the one-for-one replacement requirements, the grantee must define “not suitable for rehabilitation” in its action plan or in policies and procedures governing these activities. A grantee with questions about the one-for-one replacement requirements is encouraged to contact the HUD regional relocation specialist responsible for its jurisdiction. HUD is waiving the section 104(d) one-for-one replacement requirement for lower-income dwelling units that are damaged by the disaster and not suitable for rehabilitation because it does not account for the large, sudden changes that a major disaster may cause to the local housing stock, population, or economy. Further, the requirement may discourage grantees from converting or demolishing disaster-damaged housing when excessive costs would result from replacing all such units. Disaster-damaged housing structures that are not suitable for rehabilitation can pose a threat to public health and safety and to economic revitalization. Grantees should reassess post-disaster population and housing needs to determine the appropriate type and amount of lower-income dwelling units to rehabilitate and/or rebuild. Grantees should note that the demolition and/or disposition of PHA-owned public housing units is covered by section 18 of the United States Housing Act of 1937, as amended, and 24 CFR part 970.

b. Relocation assistance. The relocation assistance requirements at section 104(d)(2)(A) of the HCD Act and 24 CFR 42.350 are waived to the extent that they differ from the requirements of the URA and implementing regulations at 49 CFR part 24, as modified by this notice, for activities related to disaster recovery. Without this waiver, disparities exist in relocation assistance associated with activities typically funded by

HUD and FEMA (e.g., buyouts and relocation). Both FEMA and CDBG funds are subject to the requirements of the URA; however, CDBG funds are subject to section 104(d), while FEMA funds are not. The URA provides at 49 CFR 24.402(b) that a displaced person is eligible to receive a rental assistance payment that is calculated to cover a period of 42 months. By contrast, section 104(d) allows a lower-income displaced person to choose between the URA rental assistance payment and a rental assistance payment calculated over a period of 60 months. This waiver of the section 104(d) relocation assistance requirements assures uniform and equitable treatment by setting the URA and its implementing regulations as the sole standard for relocation assistance under this notice.

c. Tenant-based rental assistance. The requirements of sections 204 and 205 of the URA, and 49 CFR 24.2(a)(6)(vii), 24.2(a)(6)(ix), and 24.402(b) are waived to the extent necessary to permit a grantee to meet all or a portion of a grantee's replacement housing payment obligation to a displaced tenant by offering rental housing through a tenant-based rental assistance (TBRA) housing program subsidy (e.g., Section 8 rental voucher or certificate), provided that comparable replacement dwellings are made available to the tenant in accordance with 49 CFR 24.204(a) where the owner is willing to participate in the TBRA program, and the period of authorized assistance is at least 42 months. Failure to grant this waiver would impede disaster recovery whenever TBRA program subsidies are available but funds for cash replacement housing payments are limited and such payments are required by the URA to be based on a 42-month term.

d. Arm's length voluntary purchase. The requirements at 49 CFR

24.101(b)(2)(i) and (ii) are waived to the extent that they apply to an arm's length voluntary purchase carried out by a person who uses funds allocated under this notice and does not have the power of eminent domain, in connection with the purchase and occupancy of a principal residence by that person. Given the often large-scale acquisition needs of grantees, this waiver is necessary to reduce burdensome administrative requirements following a disaster. Grantees are reminded that tenants occupying real property acquired through voluntary purchase may be eligible for relocation assistance.

e. Optional relocation policies. The regulation at 24 CFR 570.606(d) is waived to the extent that it requires optional relocation policies to be established at the grantee level. Unlike the regular CDBG program, States may carry out disaster recovery activities directly or through subrecipients, but 24 CFR 570.606(d) does not account for this distinction. This waiver makes clear that grantees receiving CDBG–DR funds under this notice may establish optional relocation policies or permit their subrecipients to establish separate optional relocation policies. This waiver is intended to provide States with maximum flexibility in developing optional relocation policies with CDBG– DR funds.”

V. Public Law 114-223, 114-254 and 115-31 Waivers and Alternative Requirements

This paragraph of the notice applies to the State of Louisiana, which received allocations for major disasters in 2016 under Public Laws 114-223, 114-254 and 115-31. The Department may grant a waiver pursuant to the authority provided under the above appropriations, which authorize the Secretary to waive or specify alternative requirements for any provision of any statute or regulation that the Secretary administers in connection with HUD's obligation or use by the recipient of these funds (except for requirements related to fair housing, non-

discrimination, labor standards, and the environment). As required by Public Laws 114-223, 114-254 and 115-31, the waiver and alternative requirement provided in this paragraph is based upon a determination by the Secretary that good cause exists and that the waiver or alternative requirement is not inconsistent with the overall purposes of title I of the HCDA.

Rental assistance to tenants - 42 U.S.C. 5305(a)(8) is modified to permit rental assistance for up to 24 months (State of Louisiana only).

The Department has received a request from the State of Louisiana to provide up to 24 months of tenant-based rental assistance (TBRA) to households impacted by a covered disaster when those households do not meet the definition of a “displaced person” under the URA. Existing CDBG regulations allow these payments to cover rent and utilities for a short period of time as a public service activity under 42 U.S.C. 5305(a)(8), but these payments cannot extend for so long that they no longer qualify as an eligible public service activity. Following a disaster, however, households may be forced to abandon their residences and may be unable to return if the damage to the units have made them uninhabitable. Furthermore, scarcity of affordable replacement units in the recovery period following a disaster, and security and utility deposits can further exacerbate affordability concerns for tenants. This waiver and alternative requirement will provide additional time to stabilize persons or households in permanent housing and is consistent with the goal of preventing homelessness.

Due to the severe flooding that occurred in 2016, the housing stock and shelters in several parishes of the State were severely damaged or destroyed. The State notes that thousands of families continue to be doubled up with family and friends, facing eviction, in temporary housing conditions, including FEMA trailers that will be removed or have rents increased in the near

future. The damage from the flooding diminished the opportunities for homeless or at-risk persons or households to independently establish re-housing. This waiver and alternative requirement will provide additional time to stabilize persons or households in permanent housing. The goal of this waiver and alternative requirement is to prevent homelessness and provide additional time to stabilize persons or households in permanent housing along with supportive services. In developing the policies and procedures for the Rapid Rehousing program, the State must list the services to be provided and outline a referral process that will enable the targeted households to apply to live in affordable housing units, including those that are created under other CDBG-DR funded programs.

The use of CDBG-DR funds for this purpose advances the Department's priority to support forward-thinking solutions to help communities that are struggling to house and serve persons and families that are homeless or at risk of homelessness as a result of a disaster. For the reasons above, HUD is expanding the definition of public service at 42 U.S.C. 5305(a)(8) to include the following activity: provision of rental assistance to disaster-impacted households for up to 24 months. This activity is subject to the 15 percent cap on public services.

In implementing this waiver and alternative requirement, the State must document in its policies and procedures how it will determine that the amount of assistance to be provided is necessary and reasonable and not duplicative of any other funding source, including insurance. Additionally, the State is reminded that any rental assistance provided by FEMA must first be exhausted prior to providing CDBG-DR funds for this purpose. Eligible assistance includes rental assistance and utility payments and may also include rental costs (*i.e.*, security deposits and utility deposits) when the grantee determines that such payments are necessary and

reasonable to help prevent a household from being homeless.

A homeowner receiving any form of CDBG-DR interim mortgage assistance that may be offered by the State is not eligible for rental assistance as authorized by this section. This waiver and alternative requirement shall expire on September 30, 2022.

VI. Public Law 115-56 and 115-123 Waivers and Alternative Requirements

This section of the notice authorizes waivers and alternative requirements for certain grantees that received an allocation of funds appropriated under Public Laws 115-56 and 115-123, which together made available \$17.4 billion in CDBG-DR funds for necessary expenses related to disaster relief, long-term recovery, restoration of infrastructure and housing, and economic revitalization due to qualified disasters that occurred in calendar year 2017.

Public Laws 115-56 and 115-123 both authorize the Secretary to waive or specify alternative requirements for any provision of any statute or regulation that the Secretary administers in connection with HUD's obligation or use by the recipient of these funds (except for requirements related to fair housing, nondiscrimination, labor standards, and the environment). As required by these appropriations, each waiver and alternative requirement in this section is based upon a determination by the Secretary that good cause exists and that the waiver or alternative requirement is not inconsistent with the overall purposes of title I of the HCDA.

1. *Clarification of the Green Building Standards.* The Department's February 9, 2018 notice (83 FR 5844) included the requirement for the application of green building standards that have applied to CDBG-DR awards since 2013. Section VI.B.32. of the February 9, 2018 notice requires grantees to meet the green building standards for "(i) All new construction of residential

buildings and (ii) all replacement of substantially damaged residential buildings.” Section VI.B.32. subparagraph b. of the February 9, 2018 notice includes a list of green building standards that grantees may adopt and asks grantees to identify which green building standard it will use to meet the requirements. Some grantees have interpreted this requirement to mean that they must choose only one of the specified green building standards and must apply that one standard to all CDBG-DR funded activities that are subject to the requirement. HUD’s requirement, however, is only intended to require grantees to identify which green building standard it will meet for each project. It is not intended to require grantees to limit themselves to using only one of the authorized standards. To clarify HUD’s intention, HUD is replacing section VI.B.32. subparagraph b. of the February 9, 2018 notice with the following:

“b. Meaning of Green Building Standard. For purposes of this notice, the Green Building Standard means the grantee will require all construction covered by subparagraph a., above, to meet an industry-recognized standard that has achieved certification under at least one of the following programs: (i) ENERGY STAR (Certified Homes or Multifamily High-Rise), (ii) Enterprise Green Communities, (iii) LEED (New Construction, Homes, Midrise, Existing Buildings Operations and Maintenance, or Neighborhood Development), (iv) ICC–700 National Green Building Standard, (v) EPA Indoor AirPlus (ENERGY STAR a prerequisite), or (vi) any other equivalent comprehensive green building program acceptable to HUD. Grantees must identify, in each project file, which Green Building Standard will be used on any building covered by subparagraph a., along with a checklist or other documentation demonstrating the elements of the chosen standard have been followed. This will allow grantees flexibility

in the implementation of this requirement and will also allow HUD to readily identify the authorized standard chosen for each building.”

2. *Waiver to increase tourism and business marketing cap (Commonwealth of Puerto Rico only).* In the August 14, 2018 notice, the Department granted the Commonwealth of Puerto Rico a waiver to create a new eligible activity to use up to \$15,000,000 of CDBG-DR funds for tourism marketing activities to promote travel and to attract new businesses to disaster-impacted areas, consistent with the amount allocated by the Commonwealth in the action plan submitted to HUD pursuant to the February 9, 2018 notice. This notice increases the amount by \$10,000,000, allowing the Commonwealth to use up to \$25,000,000 in CDBG-DR funds to promote travel and to attract new businesses to disaster-impacted areas. This additional \$10,000,000 in CDBG-DR funds represents a substantial and necessary infusion of CDBG-DR resources to sustain the following unmet tourism marketing and business promotion needs identified in the Commonwealth’s prior waiver request: (1) advertising and publicity to correct and update public perception of Puerto Rico as a tourism destination and location for new business investment; and (2) sales promotion and publicity to update professional planners’ perceptions of the destination and its ability to host business events (*e.g.*, conventions, quarterly sales conferences, corporate meetings, association conferences) and new businesses. As the Commonwealth of Puerto Rico is proposing advertising and marketing activities rather than direct assistance to tourism-dependent and other businesses, and because the measures of long-term benefit from the proposed activities must be derived using indirect means, 42 U.S.C. 5305(a) is waived only to the extent necessary to expand the tourism and business marketing eligible activity to permit no more than \$25,000,000 for assistance for tourism and business marketing activities to promote travel and to

attract new businesses to disaster-impacted areas. No elected officials or candidates for political office shall appear in tourism or business marketing materials financed with CDBG-DR funds. Given the importance of tourism and new business investment to the overall economy, HUD is authorizing this use of funds without regard to unmet housing need.

This waiver will expire two years after the Commonwealth first draws CDBG-DR funds under the allocation of CDBG-DR funds provided in the February 9, 2018 notice. The requirements of the August 14, 2018 notice for the Commonwealth apply to all amounts used for tourism and business marketing, including the additional \$10,000,000 permitted by this waiver. The Commonwealth cannot use its CDBG-DR tourism expenditures to supplant Commonwealth or local government funds for tourism and business marketing activities, and it must develop metrics in its action plan that will demonstrate the impact of its CDBG-DR tourism and business marketing expenditures.

The Commonwealth shall coordinate its tourism promotion and business marketing activities with its designated Opportunity Zones.

3. Waiver and alternative requirement for homeowner mortgage assistance (Commonwealth of Puerto Rico only). The widespread damage to the Commonwealth's housing stock following Hurricane Maria has also negatively impacted the Commonwealth's housing market. Elderly homeowners in particular have experienced new difficulties in meeting their mortgage obligations. To assist these homeowners during the period of recovery, HUD is expanding the definition of public service at 42 U.S.C. 5305(a)(8) to include this activity and allow the Commonwealth to use up to \$5,000,000 of CDBG-DR funds for the purpose of paying arrearages on taxes and insurance for Home Equity Conversion Mortgages (HECM) insured by

the Federal Housing Administration, provided such arrearages have been incurred by the homeowner following and not before the qualified disaster and that such payments serve only to make the homeowner current in his/her required tax and insurance payments for the HECM.

Payments pursuant to this paragraph shall be made by the Commonwealth to: (1) the HECM servicer where the HECM servicer advanced taxes and insurance payments on behalf of the borrower, or (2) to the local taxing authority and/or property insurer on behalf of the borrower. The Commonwealth is reminded that as a public service activity, the HECM assistance authorized herein is subject to the 15 percent cap on the use of CDBG-DR for public service activities. This waiver and alternative requirement shall expire two years after the date on which the Commonwealth first draws CDBG-DR funds for the purpose of providing the assistance authorized herein.

4. Rental assistance to tenants - 42 U.S.C. 5305(a)(8) is modified to permit rental assistance to tenants for up to 24 months (Commonwealth of Puerto Rico only).

The Department has received a request from the Commonwealth of Puerto Rico to provide up to 24 months of tenant-based rental assistance (TBRA) to households impacted by a covered disaster when those households do not meet the definition of a “displaced person” under the URA. Existing CDBG regulations allow these payments to cover rent and utilities for a short period as a public service under 42 U.S.C. 5305(a)(8), but these payments cannot extend for so long that they are no longer qualify as an eligible public service activity. Following a disaster, however, households may be forced to abandon their residences and may be unable to return if the damage to the units have made them uninhabitable. Furthermore, scarcity of affordable replacement units in the recovery period following a disaster, and security and utility deposits

can further exacerbate affordability concerns for tenants. This alternative requirement will provide additional time to stabilize persons or households in permanent housing and is consistent with the goal of preventing homelessness.

As a result of Hurricanes Maria and Irma, rental units across the Commonwealth were seriously damaged or destroyed and affordable rental housing units are urgently needed, especially for the elderly who are in need of rental assistance. Many elderly residents are at immediate risk of becoming homeless because they cannot afford to pay rent without assistance. The goal of this waiver is to prevent and minimize the time disaster-impacted households are homeless by providing rental assistance and re-housing services, and by linking the households with services that can help them become stable and self-sufficient. In developing the policies and procedures for this TBRA program, the Commonwealth must list services to be provided and outline a referral process that will enable the targeted households to apply to live in affordable housing units, including those that are created under other CDBG-DR funded programs. The Commonwealth must clearly demonstrate in its action plan the concrete steps it will take to prevent households from becoming homeless after the exhaustion of the CDBG-DR TBRA assistance.

The use of CDBG-DR funds for this purpose advances the Department's priority to support forward-thinking solutions to help communities that are struggling to house and serve persons and families that are homeless or at risk of homelessness as a result of a disaster. For the reasons above, HUD is expanding the definition of public service at 42 U.S.C. 5305(a)(8) to include the following activity: provision of rental assistance to disaster-impacted households for up to 24 months. This activity is subject to the 15 percent cap on public services.

In implementing this alternative requirement, the Commonwealth must document, in its policies and procedures, how it will determine that the amount of assistance to be provided is necessary and reasonable and not duplicative of any other funding source. Additionally, the Commonwealth is reminded that any rental assistance provided by FEMA or insurance must first be exhausted prior to providing CDBG-DR funds for this purpose. Eligible assistance includes rental assistance and utility payments and may also include rental costs (*i.e.*, security deposits and utility deposits) when the grantee determines that such payments are necessary and reasonable to help prevent a household from being homeless.

A homeowner receiving any form of CDBG-DR interim mortgage assistance that may be offered by the Commonwealth is not eligible for rental assistance as authorized by this section. This waiver and alternative requirement shall expire on September 30, 2022.

5. Waiver to increase tourism marketing cap to further permit some activities in support of the tourism industry (U.S. Virgin Islands only). In the Department's August 14, 2018 notice, HUD granted the U.S. Virgin Islands (USVI) a waiver to spend up to \$5,000,000 of CDBG-DR funds on tourism marketing activities to promote travel to disaster-impacted areas related to the effects of Hurricanes Irma and Maria, consistent with the amount allocated by the USVI in the action plan submitted to HUD pursuant to the February 9, 2018 notice.

The USVI is seeking a waiver request to allow it to spend an additional \$20,000,000 on activities to promote tourism within those same areas, for a combined total of \$25,000,000. This increase in funding for tourism marketing activities is based upon the USVI Department of Tourism's identification of specific travel and tourism niches in which the USVI is acknowledged to be competitive, including sports and adventure; meetings, incentives,

conferences and exhibitions; and destination weddings and honeymoons.

Accordingly, 42 U.S.C. 5305(a) is waived only to the extent necessary to make eligible use of no more than \$25,000,000 for assistance for tourism marketing, provided the assisted activities are designed to support tourism to the disaster-impacted areas related to the effects of Hurricanes Irma and Maria. This waiver will expire two years after the USVI first draws CDBG-DR funds under the allocation of CDBG-DR funds provided in the February 9, 2018 notice. The requirements of the August 14, 2018 notice for the USVI apply to all amounts used for tourism marketing, including the additional \$20,000,000 permitted by this waiver. These include requirements for the USVI to develop metrics in its action plan that will demonstrate the impact of its CDBG-DR tourism expenditures and that no elected officials or candidates for political office shall appear in tourism marketing materials financed with CDBG-DR funds. Any CDBG-DR tourism expenditures may not supplant USVI or local government funds for tourism marketing.

The USVI shall coordinate its tourism promotion and marketing activities with its designated Opportunity Zones.

6. Rental assistance to tenants - 42 U.S.C. 5305(a)(8) is modified to permit rental assistance to tenants for up to 24 months (U.S. Virgin Islands only).

The Department has received a request from the USVI to provide up to 24 months of tenant-based rental assistance (TBRA) to households impacted by a covered disaster when those households do not meet the definition of a “displaced person” under the URA. Existing CDBG regulations allow these payments to cover rent and utilities for a short period as a public service under 42 U.S.C. 5305(a)(8), but these payments cannot extend for so long that they are no longer

a public service. Following a disaster, however, households may be forced to abandon their residences and may be unable to return if the damage to the units have made them uninhabitable. Furthermore, scarcity of affordable replacement units in the recovery period following a disaster, and security and utility deposits can further exacerbate affordability concerns for tenants. This waiver and alternative requirement will provide additional time to stabilize persons or households in permanent housing and is consistent with the goal of preventing homelessness.

Many of the homeowners in USVI own their homes outright or reside in long-standing familiar homes. This practice has allowed them to live on very low, fixed expenses each month and therefore these homeowners may not have the means to pay rent at a different location while their home is under repair. Additionally, many homeowners have either expended their FEMA temporary assistance and rental assistance provided by insurance or did not qualify for any rental assistance in the first place. Thus, temporary rental assistance for homeowners is necessary to prevent displacement and/or homelessness while these homes are repaired or reconstructed. The goal of this waiver and alternative requirement is to prevent and minimize the time households are homeless as a result of the disaster by providing rental assistance and re-housing services. In developing the policies and procedures for the rental assistance program, the grantee must list services to be provided and outline a referral process that will enable the targeted households to apply to live in affordable housing units, including those that are created under other CDBG-DR funded programs. Grantees must also clearly demonstrate in its action plan the concrete steps it will take to prevent households from becoming homeless after the exhaustion of CDBG-DR TBRA assistance.

The use of CDBG-DR funds for this purpose advances the Department's priority to

support forward-thinking solutions to help communities that are struggling to house and serve persons and families that are homeless or at risk of homelessness as a result of a disaster. For the reasons above, HUD is expanding the definition of public service at 42 U.S.C. 5305(a)(8) to include the following activity: provision of rental assistance to disaster-impacted households for up to 24 months. This activity is subject to the 15 percent cap on public services.

In implementing this waiver and alternative requirement, the USVI must document, in its policies and procedures, how it will determine that the amount of assistance to be provided is necessary and reasonable and not duplicative of any other funding source, including insurance. Additionally, the USVI is reminded that any rental assistance provided by FEMA must first be exhausted prior to providing CDBG-DR funds for this purpose. Eligible assistance includes rental assistance and utility payments and may also include rental costs (*i.e.*, security deposits and utility deposits) when the grantee determines that such payments are necessary and reasonable to help prevent a household from being homeless.

A homeowner receiving any form of CDBG-DR interim mortgage assistance that may be offered by the USVI is not eligible for rental assistance as authorized by this section. This waiver and alternative requirement shall expire on September 30, 2022.

VII. Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers for the disaster recovery grants under this notice are as follows: 14.218 for Entitlement CDBG grantees and 14.228 for State CDBG grantees.

VIII. Finding of No Significant Impact

A Finding of No Significant Impact (FONSI) with respect to the environment has been

made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The FONSI is available for public inspection between 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW, Room 10276, Washington, DC 20410-0500. Due to security measures at the HUD Headquarters building, an advance appointment to review the docket file must be scheduled by calling the Regulations Division at 202-708-3055 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number through TTY by calling the Federal Relay Service at 800-877-8339 (this is a toll-free number).

Dated: February 8, 2019._____

David Woll, Jr.,
Acting Assistant Secretary, Office of
Community Planning and Development.

[BILLING CODE 4210-67]

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